

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2097 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UNITED INDIA INSURANCE CO.LTD.

Versus

PASHIBEN MAFATLAL GOHEL

Appearance:

MR PV NANAVATI for Petitioner

SERVED for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 10/04/96

ORAL JUDGEMENT

1. Rule. Though respondents are already served none has appeared on their behalf, and the matter is already adjourned on three occasions thereafter to enable them to file appearance. Despite adjournments being granted none has appeared and hence this CRA is finally heard today and is being disposed of by this judgment.

2. The respondent Nos 1 to 3 are the original claimants and respondent Nos 4 & 5 are the original opponents No.1&2 in MACP No.1403/93 filed before the MACT, Kheda at Nadiad for recovery of amount of Rs.1 lac from respondent Nos 4 & 5 as well as present petitioner, which is Insurance Co. Respondent Nos 4 & 5 are the driver and owner of the vehicle respectively.

3. In such petition an application is moved by the claimants u/sec 140 of the Motor Vehicles Act, 1988 for payment of interim compensation on the basis of "no fault liability". It was their case that the matador in question which was being driven by the driver was driven rashly and negligently and that while the deceased was crossing the road and when he already crossed 3/4th of road he was knocked down by the vehicle and he died. It was also prayed that the interim compensation which ought to have been paid u/sec 140 of the said Act is not paid and therefore order should be passed calling upon the Insurance Company as well as the driver and the owner of the vehicle to pay the amount of interim compensation.

4. Motor Accident Claims Tribunal(Aux) has vide judgment and order, dated 26th July, 1995 granted application holding that the claimants were entitled to recover by way of interim compensation an amount of Rs.25,000/- together with costs and interest at the rate of 15% from the date of the accident till its realization. It was further directed that the Insurance Co.shall have to deposit the said amount within one month from the date of the award.

5. It may be noted that the section 140 of the M.V.Act, 1988 is subsequently amended in the year 1994 so as to enhance the amount of interim compensation from Rs.25,000/- to Rs.50,000/- in case of fatal accidents and to enhance from Rs.12,500/- to Rs.25,000/in case of ordinary injury. In the present case the tribunal has come to conclusion that the accident has caused by the Motor Vehicle namely the matador of the ownership of respondent Nos 4 & 5 herein bearing Reg.No.GJU 3-T 5816. The tribunal has assumed that the said vehicle is insured with the petitioner-Insurance Co. and that the petitioner-Insurance Co is liable to pay the amount of compensation.

6. Mr.P.V.Nanavaty appearing for the petitioner-Insurance Co.has however submitted before this court that the award of amount of Rs.25,000/- by the tribunal as interim compensation u/sec 140 of the said Act is not sustainable in law at all. He submitted that

admittedly the accident has taken place on 23rd July, 1993. Claimants have produced before the trial court the cover note issued by the Insurance Co. with respect to the vehicle in question which operative from 27.4.92 to 26.4.93. It is the positive case of the Insurance Co. that the said insurance is thereafter not renewed nor is the offending vehicle covered by the insurance on the date of the accident and that the Insurance Co. was therefore not liable to pay any amount whatsoever.

7. When the defence of this nature is raised by the Insurance Co. to the effect that the vehicle in question is not at all insured with the Insurance Co. or that it was not covered by any valid and subsisting insurance on the date of the accident, the tribunal can not call upon the Insurance Co. to deposit the amount of interim compensation. U/sec 140 of the said Act ordinarily it is the liability of the owner as well as driver of the vehicle to pay the amount of compensation on the ground of tort-feasor that the tort-feasor is liable to pay interim compensation under the principle of "no faulty liability". However, if such liability is extended to the Insurance Company also because of the provisions of Motor Vehicles Act, 1988 under which it is compulsory for the owner of the vehicle to get his vehicle insured there must subsist valid insurance with respect to the vehicle and then the insurance company can be called upon to pay the interim compensation under the principle of "no faulty liability".

8. In view of the aforesaid attention of the tribunal was not at all invited to the fact that on the date of accident the vehicle was not covered by any insurance and that there was no subsisting insurance valid in favour of respondent Nos 4 & 5 whereby the liability was taken upon by the petitioner-Insurance Co. When the tribunal has not discussed this part of the matter at all and has assumed that the Insurance Co. is one with whom the vehicle was insured, it would be just and proper to quash and set aside the order passed by the tribunal and to remand the matter to the tribunal to decide as to whether the vehicle in question was insured with the petitioner-Company and in case it is prima facie established before the tribunal that the vehicle in question was insured with the Insurance Company on the date of accident the amount of Rs.25,000/- which is directed to be deposited by this court before the tribunal may be permitted to be disbursed if the finding is in favour of the petitioner-Company the said amount shall be permitted to be returned to the petitioner-Insurance Co.

9. In the result, CRA succeeds to the aforesaid extent. Judgment and order of the tribunal is quashed and set aside and the matter is remanded to the MACT(Aux), Kheda at Nadiad for deciding the application under section 140 of the said Act afresh in the light of observations made by this court hereinabove. Rule is made absolute accordingly. No costs.

...